

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Amendment of Part 2 of the Commission's	)	
Rules to Allocate Spectrum Below 3 GHz for	)	
Mobile and Fixed Services to Support the	)	ET Docket No. 00-258
Introduction of New Advanced Wireless	)	
Services, including Third Generation Wireless	)	
Systems	)	
	)	

**REPLY COMMENTS OF  
SPRINT NEXTEL CORPORATION**

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## Summary

The comments filed in response to the Fifth Notice of Proposed Rule Making (*Relocation Notice*) in this proceeding demonstrate that the Commission must adapt the incumbent relocation policies it has developed in prior proceedings to the particular circumstances presented by the relocation of BRS 1-2 from the 2.1 GHz band to the 2.5 GHz band. BRS systems provide point-to-multipoint broadband and video services to numerous customers in a number of markets throughout the country, and will need new equipment in relocating to a band that itself will be undergoing transition. The Commission should adopt relocation rules tailored to these circumstances to ensure BRS incumbents receive comparable facilities and avoid disruption of BRS service.

The commenters uniformly recognized that point-to-multipoint BRS operations in a given geographic area should be treated as a single, integrated system that must be relocated as a unit, rather than on a piecemeal, link-by-link basis as suggested in the *Relocation Notice*. Commenters also generally agreed that the Commission should use a “relocation zone,” or line-of-sight test, for harmful interference. Relocating BRS 1-2 using this system-by-system approach will prove far more efficient than adopting a link-by-link approach and will prevent disruption of customer service. For many people – especially those in rural, remote and tribal areas – BRS is their only broadband option. Preventing service disruption is thus crucial to ensuring that millions of Americans do not lose access to broadband service.

Commenters also broadly supported allowing BRS incumbents to continue adding new subscribers within their existing markets until relocated. Indeed, failure to permit Sprint Nextel to add customers within its existing service footprint would cause the

addressable market to plummet overnight from approximately 33 million people to less than 20,000 – a decline in the availability of broadband service of over 99.99%.

The Commission should adopt a comparable facilities standard that ensures BRS operators are made whole. Consistent with Commission precedent, BRS 1-2 operators should receive replacement facilities that provide comparable throughput, reliability, operating costs and coverage area. The Commission should also make clear that providing comparable facilities will require new AWS entrants to clear Broadcast Auxiliary Service operations from the 2496-2500 MHz band.

BRS operators should have the option of selecting and deploying their own replacement facilities, provided they respond in a timely manner to information requests and negotiate in good faith with AWS new entrants. In these circumstances, the BRS incumbent should be the ultimate decisionmaker for its replacement system, with all reasonable relocation costs funded by AWS new entrants. As the Wireless Communications Association (WCA) explained in its comments, this approach will promote a more efficient, less disruptive relocation process.

As a number of commenters recognized, BRS lessees/network operators must have a place at the table in the BRS relocation process. In many cases, the lessee/network operator has invested substantial money and resources in providing services to its customers and therefore should be part of all relocation negotiations. Denying the lessee/network operator the right to negotiate and receive appropriate compensation would make BRS relocation more costly, more time consuming, and more disruptive to customers.

To help ensure an efficient and equitable relocation process, the Commission should adopt two commenter proposals regarding the timetable for BRS relocation. First, the Commission should adopt either Sprint Nextel's proposal for a 15-year limit on BRS 1-2 relocation, or WCA's proposal for a hard transition deadline, since either proposal would ensure that all operators desiring to transition to the 2.5 GHz band would be permitted to do so, at the expense of AWS auction winners. Second, the Commission should permit BRS and AWS operators to use rolling negotiations during multi-market relocations.

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**REPLY COMMENTS OF  
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Sprint Nextel Corporation (Sprint Nextel) hereby replies to the comments filed in response to the Fifth Notice of Proposed Rule Making in the above-captioned proceeding.<sup>1</sup> Virtually all of the commenters agreed that the relocation rules adopted in this proceeding must be tailored to the particular circumstances presented by the relocation of Broadcast Radio Service (BRS) channels 1 and 2.<sup>2</sup> Commenters also widely agreed that BRS operators must be “made whole” in the relocation of their facilities to the 2.5 GHz band.<sup>3</sup> A number of BRS 1 and 2 customers have filed comments emphasizing the importance of this objective. These end users, including several

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<sup>1</sup> *Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems*, Eighth Report and Order, Fifth Notice of Proposed Rule Making and Order, 20 FCC Rcd. 15866 (2005) (*Relocation Notice*).

<sup>2</sup> Comments on Fifth Notice of Proposed Rulemaking of WCA at 7-10 (WCA Comments); Comments of Sprint Nextel Corporation at 3 (Sprint Nextel Comments); Comments of BellSouth Corporation, *et al.* at 4-5 (Nov. 23, 2005) (BellSouth Comments); Comments of CTIA – The Wireless Association at 3-4 (CTIA Comments). (Unless otherwise indicated, all comments cited herein were filed in ET Docket No. 00-258 on November 25, 2005.)

<sup>3</sup> CTIA Comments at 9; WCA Comments at 5-6.

educational institutions, described their reliance on BRS operators for wireless broadband and the hardship that would occur if the relocation disrupted their service.<sup>4</sup> To avoid any disruption, the Commission should develop relocation and reimbursement rules that ensure a smooth relocation of BRS 1 and 2 to the 2.5 GHz band.

**I. THERE IS ACROSS-THE-BOARD SUPPORT AMONG COMMENTERS FOR RELOCATING BRS 1-2 LICENSEES BASED ON A SYSTEM-BY-SYSTEM “RELOCATION ZONE” APPROACH**

Commenters were unanimous in their recognition that point-to-multipoint BRS operations in a given geographic area should be treated as a single, integrated system that must be relocated as a unit, rather than on a piecemeal, link-by-link basis.<sup>5</sup> The record establishes that, because of the point-to-multipoint nature of BRS systems, use of a system-by-system approach fosters the timely and efficient relocation of those operations, without proving unduly burdensome to the Advanced Wireless Service (AWS) new entrants.<sup>6</sup> Commenters also supported establishing a line-of-sight “relocation zone” around the BRS base station hub as “[t]he simplest, most equitable, and most cost-effective manner of protecting AWS and BRS licensees against interference.”<sup>7</sup> Under

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<sup>4</sup> See, e.g., Letter from Richard Scholz, Valley Lutheran High School, Phoenix, AZ, to Chairman Martin (Nov. 29, 2005); Letter from Laura Kinley, Santa Clara County Office of Education, San Jose, CA, to Chairman Martin (Dec. 2, 2005).

<sup>5</sup> CTIA Comments at 4-5; Comments of Verizon Wireless at 4 (Nov. 23, 2005) (Verizon Wireless Comments); WCA Comments at 33-36; BellSouth Comments at 6; Comments of C&W Enterprises at 3 (C&W Enterprises Comments); Comments of SpeedNet, L.L.C. at 3 (Nov. 22, 2005) (SpeedNet Comments); see also Comments of T-Mobile USA, Inc. at 3 (T-Mobile Comments) (supporting CTIA’s proposal that BRS licensees provide relocation cost estimates on a system-by-system basis).

<sup>6</sup> See, e.g., CTIA Comments at 5; WCA Comments at 33-36; BellSouth Comments at 6. As WCA explains, a link-by-link approach is particularly inappropriate because each link “shares equipment, service and marketing resources” with all of the other links served by the BRS base station. WCA Comments at 34.

<sup>7</sup> CTIA Comments at 5; see also WCA Comments at 35; C&W Enterprises Comments at 3 (all BRS operations in the geographic service area will need to be relocated); SpeedNet Comments at 3 (same).

this approach, AWS new entrants that wish to deploy AWS base stations within a line of sight of an incumbent's BRS hub (*i.e.*, within the "relocation zone") would be required to fund relocation of the affected BRS system.<sup>8</sup> As Sprint Nextel explained in its comments, adoption of a system-by-system relocation zone approach will prove easier, less time consuming, and more cost effective for both incumbents and new entrants. More importantly, it will ensure that 33 million American consumers in rural, suburban, and urban areas remain able to receive BRS wireless broadband services without disruption pending relocation. The Commission accordingly should reject the link-by-link relocation proposal in the *Relocation Notice*, and instead adopt the system-by-system relocation approach uniformly supported by the commenters.

## **II. COMMENTERS AGREE THAT THERE SHOULD BE NO LIMITS ON A BRS OPERATOR'S ABILITY TO ADD NEW SUBSCRIBERS WITHIN ITS EXISTING SERVICE AREA**

To remain commercially viable, BRS operators must be able to add new customers in those geographic areas in which they have already deployed receive base station hubs, until relocated. Today, Sprint Nextel offers high-speed, wireless broadband service to fourteen geographic areas with a population of more than 33 million people. Failure to permit Sprint Nextel to add customers within its existing service footprint would disrupt customer service by causing the addressable market to plummet overnight from approximately 33 million people to less than 20,000. Prohibiting Sprint Nextel and other BRS operators from adding new customers to their existing BRS service areas also

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<sup>8</sup> CTIA Comments at 5-6; WCA Comments at 35-36; Sprint Nextel Comments at 26-27. A number of commenters agreed that the relocation zone should be based upon the criteria adopted by the Commission in the *1998 Two-Way Order*. See WCA Comments at 36 & n.74; CTIA Comments at 5-6 & n.19 (citing *Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees to Engage in Fixed Two-Way Transmissions*, Report and Order, 13 FCC Rcd. 19112, App. D at 10 (1998) (*1998 Two-Way Order*)).



would adversely affect the national availability of broadband in the United States, contrary to the Commission's policy of promoting broadband deployment and competition, especially in rural areas.<sup>9</sup>

BRS incumbents, like other service providers, also “depend on the ability to add new subscribers, both to replace those that inevitably churn off a system and to spread the cost of the system over a larger subscriber base,” thus ensuring competitive service rates for end-user consumers.<sup>10</sup> Recognizing these market realities, commenters agreed that “[n]othing . . . should limit BRS licensees from adding customers in [existing] markets.”<sup>11</sup>

Allowing BRS operators to add subscribers is consistent with a system-by-system “relocation zone” approach, which will ensure that BRS incumbents can add subscribers within their existing footprint without increasing the threat of interference to AWS new entrants. As Sprint Nextel has explained, BRS base station hubs typically are located at a high elevation to permit unobstructed line-of-sight transmissions from subscriber transmitters within the incumbent's service area.<sup>12</sup> These high-elevation hubs are extraordinarily sensitive to radiofrequency emissions, and theoretically are vulnerable to

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<sup>9</sup> Sprint Nextel Comments at 6-7; *Spectrum Study of the 2500-2690 MHz Band: The Potential for Accommodating Third Generation Mobile Systems*, ET Docket No. 00-232, Interim Report at 22 (Nov. 15, 2000) (“in rural or otherwise underserved markets in the country, [BRS] may be the sole provider of broadband service”).

<sup>10</sup> WCA Comments at 37-39; Sprint Nextel Comments at 21-23.

<sup>11</sup> CTIA Comments at 12; WCA Comments at 37; *see also* SpeedNet Comments at 2 (disagreeing with FCC proposal that expansions of existing BRS systems be authorized on a secondary basis after the effective date of the report and order); C&W Enterprises Comments at 1-2 (same).

<sup>12</sup> Sprint Nextel Comments at 14. For example, base station hubs are often located on or near a mountaintop, skyscraper, or a high tower. *Id.*

interference for more than 1000 miles.<sup>13</sup> Subscriber transmitters, in comparison, usually are mounted no higher than 30 to 50 feet above ground level and emit a relatively weak signal.<sup>14</sup> Given these technical characteristics, a BRS receive station hub will suffer harmful interference from a new AWS base station deployed within the “relocation zone” long before the addition of new BRS subscriber transmitters would cause harmful interference to the AWS provider. As a result, adding BRS subscribers prior to relocation will not affect the size of the “relocation zone,” and thus will not increase the likelihood of harmful interference to AWS new entrants.<sup>15</sup> The Commission should require AWS new entrants to fund relocation of any new customer additions, pursuant to their obligation to transition BRS 1-2 to the 2.5 GHz band.<sup>16</sup>

### **III. THE COMPARABLE FACILITIES STANDARD MUST ENSURE THAT BRS OPERATORS ARE MADE WHOLE IN THE RELOCATION TO THE 2.5 GHz BAND**

All parties in this proceeding agree that BRS systems operating in the 2150-2162 MHz band are entitled to comparable facilities when they are relocated to the 2.5 GHz band. As Verizon Wireless stated in its comments, one of the central goals in establishing rules for clearing the 2.1 GHz spectrum for AWS is “to ensure that incumbent licensees are provided with comparable facilities with minimal disruption to

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<sup>13</sup> *Id.* at 14, 18.

<sup>14</sup> *Id.* at 14-15, 18.

<sup>15</sup> Where necessary to accommodate subscriber growth, the FCC also should permit BRS operators to modify existing BRS base stations, without jeopardizing their right to relocation funding.

<sup>16</sup> C&W Enterprises and SpeedNet proposed that the FCC extend the period for expanding or commencing eligible operations. C&W Enterprises Comments at 1-2 (extension until AWS entrant seeks transition negotiations); SpeedNet Comments at 2 (extension until 90 days after negotiations requested). Verizon Wireless also proposed “a freeze on the construction of new facilities and any other major modifications to BRS systems.” Verizon Wireless Comments at 6-7. To the extent that any of these proposals would limit the ability of incumbents to add new subscribers within existing markets, they should be rejected for the reasons discussed above.

their current operations.”<sup>17</sup> CTIA echoed this objective, observing that incumbent BRS operators must be “made whole post-relocation.”<sup>18</sup> The Commission should establish rules that achieve this important objective and that take into account the particular circumstances of BRS relocation.

**A. BRS Incumbents Should Have the Right to Select and Deploy Their Own Replacement Facilities**

WCA proposed in its comments that, unless the parties agree otherwise, BRS operators should have the sole responsibility for selecting and deploying “comparable facilities” and taking all other steps necessary to complete relocation to the 2.5 GHz band, with AWS new entrants funding all relocation costs.<sup>19</sup> Sprint Nextel agrees that this approach will help ensure that confidential information regarding *both* the BRS incumbent’s customers *and* network is not disclosed to AWS new entrants, who will be offering competing services.<sup>20</sup> The identity and location of the incumbent’s customers is highly proprietary information. So is information concerning the incumbent’s base station facilities, including a system’s site configuration, network performance, and network loading capacity. Operators carefully guard this competitively sensitive information from their competitors.<sup>21</sup>

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<sup>17</sup> Verizon Wireless Comments at 1.

<sup>18</sup> CTIA Comments at 9.

<sup>19</sup> WCA Comments at 14-15.

<sup>20</sup> A number of parties urged the Commission to adopt relocation rules and procedures that take into account the fact that BRS and AWS licensees will be competitors. *See* T-Mobile Comments at 3; BellSouth Comments at 5; WCA Comments at 13; Sprint Nextel Comments at 24-26.

<sup>21</sup> Given these sensitivities, Sprint Nextel disagrees with T-Mobile’s proposal to require all entities constructing new or modifying existing sites to file data with the relocation clearinghouse, *see* T-Mobile Comments at 6, to the extent that it would require the disclosure of customer- or site-specific information or proprietary business data.

To help safeguard its confidential information, the BRS licensee should generally be in charge of its own relocation process. So long as the BRS licensee responds in a timely manner to information requests and negotiates in good faith with the new entrant, the BRS licensee should remain the ultimate decisionmaker for its replacement system. As the ultimate decisionmaker, the BRS licensee may choose to contract with an AWS licensee for replacement equipment, any vendor or other qualified contractor, or it may choose to relocate its own facilities, with funding from the AWS new entrant. The BRS incumbent should not be required to permit the AWS new entrant to physically build and configure the BRS operator's network base stations and customer premises equipment. If the incumbent fails to negotiate in good faith, however, then the new entrant should have the right to pay the incumbent a reasonable estimate of expenses and the incumbent would become secondary to the new entrant's operations, following a reasonable transition period.

**B. Comparable Facilities Should be Measured in Terms of Throughput, Reliability, Operating Costs, and Geographic Area Coverage**

As a number of commenters pointed out, "comparable facilities" should be defined in a manner appropriate to the nature of BRS. Virtually all commenters agree that replacement facilities should allow the incumbent to maintain the same level of service in terms of throughput, reliability, and operating costs. Consistent with Commission precedent, "comparable facilities" must also include providing the BRS operator with the same geographic coverage area provided by its system prior to relocation.<sup>22</sup> For example, in defining comparable facilities for purposes of 800 MHz

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<sup>22</sup> WCA Comments at 19 n.40; Sprint Nextel Comments at 34, 40.

band reconfiguration, the Commission listed “coextensive geographic coverage.”<sup>23</sup> To provide comparable geographic coverage, AWS new entrants will need to fund new facilities for BRS operators when they are relocated to the 2.5 GHz band. The comparable facilities standard should encompass all reasonable costs associated with relocating BRS 1-2 to a different band, and provide the relocated incumbent with the same geographic coverage and comparable throughput, reliability, and operating costs.

Comparable facilities will also require *wireless* facilities, with these new facilities located in the 2.5 GHz band. Although individual incumbents may of course agree to alternative arrangements, several parties emphasized the importance of obtaining wireless facilities to continue providing dynamic point-to-multipoint service and to integrating BRS 1-2 operations with the rest of the BRS spectrum in the 2.5 GHz band.<sup>24</sup> In addition, commenters agreed comparable facilities must include the replacement of BRS customer premises equipment (CPE).<sup>25</sup>

**C. AWS New Entrants Should Clear BAS Operations from the 2496-2500 MHz Band**

Sprint Nextel endorses WCA’s proposal to require AWS auction winners to clear Broadcast Auxiliary Service (BAS) operations in the 2496-2500 MHz band so that this band can be used as replacement spectrum for BRS channel 1.<sup>26</sup> BAS and BRS licensees agree that BRS and BAS systems cannot share the same spectrum; therefore, the only viable solution is to digitize BAS systems so that they maintain the same number of

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<sup>23</sup> *Improving Public Safety Communications in the 800 MHz Band*, Memorandum Opinion and Order, 20 FCC Rcd 16015, ¶ 37 (2005) (*800 MHz MO&O*).

<sup>24</sup> See, e.g., BellSouth Comments at 4-5; Sprint Nextel at 36-37, 39-40.

<sup>25</sup> See CTIA Comments at 9; WCA Comments at 12 n.24; Sprint Nextel Comments at 40; C&W Enterprises Comments at 4.

<sup>26</sup> WCA Comments at 49-50.

channels while using less spectrum, which would open the 2496-2500 MHz band for BRS-1.<sup>27</sup> AWS auction winners should fund this repacking solution since it is a necessary step in providing comparable BRS replacement spectrum that enjoys comparable interference protection rights.<sup>28</sup>

More generally, AWS new entrants should bear any incremental costs for designing and purchasing new equipment to ensure relocated BRS operations are able to share spectrum on a co-primary basis with the Mobile Satellite Service (MSS), Industrial, Scientific and Medical (ISM) devices, and BAS. Sprint Nextel and other parties have sought reconsideration on these sharing requirements but, to the extent the Commission reaffirms its decision on these issues, AWS auction winners should be responsible for funding facilities that minimize the risk of interference from any sharing arrangements and come as close as possible to putting BRS incumbents in the same interference and operating environment that they enjoy in the 2.1 GHz band today.

Without these steps, unacceptable operational restrictions will impede deployment on BRS 1-2 and isolate those channels from BRS-EBS operations in the rest of the 2.5 GHz band. This outcome would negate the Commission's effort in the *BRS-EBS Order* to "produce the optimal situation for the relocation of [BRS 1-2]" by "creat[ing] an optimal band plan with contiguous spectrum, and integrat[ing] these licenses into the new

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<sup>27</sup> This repacking proposal is the subject of pending petitions for reconsideration filed by WCA and the Society of Broadcast Engineers in IB Docket No. 02-364.

<sup>28</sup> *Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band*, Second Report and Order, 12 FCC Rcd. 19079, ¶ 93 (1997) (*800 MHz SMR Second R&O*) (comparable facilities includes providing same level of interference protection on the new system). Sprint Nextel also supports WCA's proposal that the Commission require AWS auction winners to reimburse 2.5 GHz transition proponents the *pro rata* transition costs associated with BRS 1-2. WCA Comments at 51.

BRS instead of orphaning MDS operations such that they would be part of a different service.”<sup>29</sup>

**D. BRS 1-2 Operations Should Not Be Required to Relocate Until the Transition to the New 2.5 GHz Band Plan is Completed**

For the reasons set forth in Sprint Nextel’s comments, it will not be feasible to relocate operations on BRS 1-2 until licensees in the 2.5 GHz band in the market at issue have completed the transition to the new band plan contemplated by the *BRS-EBS Order*.<sup>30</sup> Attempting relocation prior to the transition would result in a host of co- and adjacent-channel interference conflicts and an inefficient use of resources. As WCA explains, “the problem here is that until a transition occurs, comparable facilities cannot be deployed using BRS channels 1 and 2 because 2500-2502 MHz and 2618-2624 MHz will be allocated to other licensees until the transition has been completed.”<sup>31</sup>

Although recognizing this problem, WCA suggested in its comments a two-step approach under which BRS 1-2 operations would, on an interim basis, be relocated to 2496-2500 MHz and 2686-2690 MHz (the current “I channels”), respectively; when the transition is completed, these operations would be migrated a second time to their designated spectrum under the new band plan (*i.e.*, 2496-2502 MHz and 2618-2624 MHz). Although Sprint Nextel has no objection to individual parties negotiating mutually agreeable relocation arrangements, it believes the two-step approach outlined by WCA cannot constitute “comparable facilities” under the Commission’s rules. As WCA

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<sup>29</sup> *Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd. 14165, ¶ 27 (2004) (*BRS-EBS Order*).

<sup>30</sup> Sprint Nextel Comments at 37-39.

<sup>31</sup> WCA Comments at 46.

recognizes, the interim channel position set forth in its proposal would leave BRS operators with 4 MHz less spectrum than they currently have at 2.1 GHz. In addition, BRS systems would go from using 12 MHz of contiguous spectrum (2150-2162 MHz) to using two separated bands (2496-2500 MHz and the I channel). Even putting aside the interim loss of 4 MHz of spectrum, it does not appear technically feasible to operate comparable facilities with this degree of band separation, particularly for Frequency Division Duplex (FDD) systems. The two-step relocation contemplated by WCA's suggestion would likely also increase costs and run the risk of disrupting customer service. The better approach is to coordinate the BRS relocation schedule with the 2.5 GHz transition on a market-by-market basis so that the 2.5 GHz transition is complete before BRS relocation takes place.

**E. The Commission Should Reject CTIA's Proposal to Impose a 110% Cap on Reimbursable Costs**

CTIA proposed in its comments that BRS operators be required to provide estimates of their relocation costs prior to the AWS auction and that an AWS auction winner's obligation to fund relocation costs be capped at 110% of the pre-auction estimates.<sup>32</sup> CTIA, however, offers no precedent to support its proposal, nor does it provide any rational basis for capping expenses at 110% as opposed to 150% or any other percentage.

As a potential bidder in the AWS auction, Sprint Nextel understands the desire to provide greater certainty for bidders regarding BRS relocation costs. Sprint Nextel, therefore, does not oppose requiring BRS licensees to make general, good faith estimates

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<sup>32</sup> CTIA Comments at 9-10.



of their relocation costs prior to the auction.<sup>33</sup> These estimates will enable bidders to assess more accurately the aggregate costs of clearing the BRS 1-2 spectrum and thus help them formulate their bidding strategies.

Sprint Nextel, however, opposes CTIA's proposal to impose a cap on BRS incumbents' reimbursement rights based on pre-auction cost estimates. It would be inequitable and arbitrary to hold BRS incumbents to estimates that in many cases will be made years before relocation takes place. There are a range of uncertainties and factors beyond the BRS operator's control that will affect relocation costs over this time period. Capping expenses at some arbitrary multiple of an estimate made years earlier could work a serious injustice on incumbent licensees by providing them with far less than the comparable facilities to which they are entitled.

CTIA's proposal is also inconsistent with Commission precedent. In a 2003 decision regarding AWS service rules, the Commission rejected a request to establish a pre-auction cap on new entrants' reimbursement obligations for clearing the 2.1 GHz band.<sup>34</sup> The Commission reasoned that "a Commission determination of maximum reimbursement liability prior to auction would be contrary to the policy favoring negotiation ... [and] may inject unnecessary administrative delay to any auction because incumbents or interested parties might dispute the Commission's determination."<sup>35</sup>

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<sup>33</sup> The Commission, however, should not require detailed or itemized cost estimates prior to the auction. As stated below, there are significant uncertainties at this point in time regarding relocations that are still years away. These uncertainties make any attempt to itemize relocation costs prior to the auction impractical.

<sup>34</sup> *Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands*, Report and Order, 18 FCC Rcd. 25162, ¶ 54 (2003).

<sup>35</sup> *Id.*

#### IV. NETWORK OPERATORS MUST BE PARTIES TO THE RELOCATION PROCESS

Sprint Nextel objected in its comments to the Commission's proposal to make the BRS spectrum licensee, rather than the lessee/network operator, the party with the right to negotiate and receive relocation compensation.<sup>36</sup> WCA echoed these objections, urging the Commission to make the spectrum lessee a party to the relocation process.<sup>37</sup> WCA correctly noted that:

BRS spectrum lessors have generally very little invested in their facilities, as it is generally the BRS spectrum lessee that has constructed all of the facilities associated with the wireless broadband or video operations. Thus, the incentives and motivations of the licensee do not necessarily mirror those of the lessee, and it cannot be said that all existing lease agreements – most of which were entered into long before the Commission's decision to refarm the 2150-2160 MHz band – specifically address refarming.<sup>38</sup>

Therefore, excluding the network operator from the relocation process would not only harm the network operator, but also create a substantial risk of customer service being disrupted. The lessee/network operator typically provides the broadband data or video service in question and is responsible for the customer relationship. Contrary to the Commission's suggestion in the *Relocation Notice*, making the licensee the sole party with the right to negotiate and receive relocation compensation would undermine, not promote, "the purpose of the 'comparable facilities' policy to provide new facilities in the relocation band so that the public continues to receive service."<sup>39</sup>

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<sup>36</sup> Sprint Nextel Comments at 42-44. The "network operator" is the entity that owns the base station receiver or transmitter (as relevant) and has provisioned end users with CPE capable of communicating with its network.

<sup>37</sup> WCA Comments at 44-45.

<sup>38</sup> *Id.* at 44.

<sup>39</sup> *Relocation Notice* ¶ 20. The *Relocation Notice* suggests that issues between the licensee and the lessee could be worked out in a private agreement between the parties, but does not explain

As WCA emphasized, Sprint Nextel and other network operators are *not* seeking “double recovery” for both the licensee and the lessee.<sup>40</sup> The AWS new entrants should only pay once for relocating facilities. As described above, excluding the lessee/network operator from the process would undermine, not further, the Commission’s regulatory objectives in this proceeding. It would also be inconsistent with the Commission’s secondary market leasing rules. These rules were designed to facilitate the leasing of spectrum, and allow lessees to acquire *de facto* control over spectrum rights. Under these circumstances, “the lessee must exercise all associated responsibilities inherent in such control,” and “will be held directly and primarily responsible for ensuring that it complies with the Communications Act and all applicable policies and rules.”<sup>41</sup> The Commission cannot expect a BRS lessee to bear these regulatory responsibilities, but at the same time deny it a place at the table when it comes to BRS 1-2 relocation.

**V. THE FCC SHOULD ESTABLISH A TIMETABLE THAT PROMOTES AN EFFICIENT RELOCATION THAT ENSURES BRS INCUMBENTS ARE MADE WHOLE**

Sprint Nextel agrees with commenters that the FCC should adopt two proposals that will ensure an efficient and equitable integration of BRS 1-2 operations into the 2.5 GHz band. First, the Commission should adopt either Sprint Nextel’s proposal for a 15-

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how this would be done. As WCA noted in its comments, lease agreements may not address relocation issues, and it is unclear what incentive licensees would have to enter into new agreements to resolve those issues. Aside from this problem, a new entrant that negotiates a relocation arrangement with a licensee that results in harm to the lessee could find itself the defendant in a lawsuit brought by a lessee for tortious interference with its contract rights. Far from simplifying matters, the Commission’s proposal to exclude the lessee from the relocation process could result in a litigation morass that only delays and adds to the cost of BRS relocation.

<sup>40</sup> WCA Comments at 45.

<sup>41</sup> *Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets*, Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd. 20604, ¶ 13 (2003).

year limit on BRS 1-2 relocation, or WCA's proposal for a hard transition deadline, since either proposal would ensure that all operators desiring to transition to the 2.5 GHz band would be permitted to do so, at the expense of AWS auction winners. Second, Sprint Nextel agrees that it is appropriate to permit BRS and AWS operators to use rolling negotiations during multi-market relocations.

**A. Regardless of Whether It Adopts a 15-Year Limit or a Hard Transition Date, the Commission Should Ensure that All BRS Licensees Desiring to Relocate Are Transitioned at the Expense of AWS Auction Winners**

New AWS licensees do not have an obligation to demonstrate that they have constructed their AWS systems and are providing "substantial service" until the end of their initial, fifteen-year license term.<sup>42</sup> As Sprint Nextel and other commenters recognized, allowing the AWS relocation obligation to expire prior to this 15-year build-out deadline provides an incentive for AWS new entrants to delay providing wireless broadband services to the public in order to avoid paying for relocation.<sup>43</sup> In order to avoid creating a perverse incentive, Sprint Nextel proposed that the BRS relocation obligation expire in 15 years, at the same time as the initial AWS license term.<sup>44</sup>

Although it continues to support its original proposal, Sprint Nextel does not oppose adopting WCA's proposal for a hard transition date by which all licensees in the band must be relocated to alternative replacement spectrum. In particular, WCA proposed in its comments that the FCC require every operator in BRS 1-2 to relocate, at the expense of the AWS new entrants, to comparable facilities no later than 10 years

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<sup>42</sup> 47 C.F.R. § 27.13(g).

<sup>43</sup> Sprint Nextel Comments at 44; BellSouth Comments at 9; WCA Comments at 30.

<sup>44</sup> Sprint Nextel Comments at 44; *see also* CTIA Comments at 12 (supporting 15-year sunset date for BRS relocation).

following grant of the AWS licenses within the relocation.<sup>45</sup> As WCA explained, because AWS and BRS will be competitors, adoption of a hard transition date is the best way to balance the FCC's desire to ensure that BRS operators will be reimbursed for their relocation expenses while clearing the band quickly to enable roll-out of new AWS services.<sup>46</sup> Given the merits of WCA's proposal for an all-inclusive, hard transition date, Sprint Nextel would not object to adoption of that proposal in lieu of a 15-year limit. Either proposal is consistent with FCC's principal goal of ensuring a comprehensive and equitable BRS 1-2 relocation to the 2.5 GHz band.

**B. CTIA's Proposal for Rolling Negotiations During Multi-Market Relocations Is Workable**

Sprint Nextel also supports CTIA's proposal for rolling negotiations during multi-market relocations.<sup>47</sup> In addition to helping manage resource constraints on both BRS and AWS operators, rolling negotiations are consistent, *inter alia*, with Sprint Nextel's "relocation zone" proposal, which allows for market-by-market transitions while still protecting against harmful interference.<sup>48</sup> Accordingly, Sprint Nextel does not oppose rolling negotiations in multi-market locations, so long as BRS systems that would experience harmful interference from AWS operations are relocated prior to AWS entry, and so long as no licensee that desires to transition is abandoned in the 2.1 GHz band without any prospect of receiving AWS relocation funding.

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<sup>45</sup> WCA Comments at 30-31 & n.64. WCA specifically proposed that the F Block AWS auction winner fund the costs of relocating any remaining BRS operators. WCA at 31. Because each AWS new entrant is capable of causing some interference to BRS 1-2, Sprint Nextel instead would require all AWS auction winners to pay a *pro rata* share of the relocation expenses.

<sup>46</sup> WCA Comments at 29-31.

<sup>47</sup> CTIA Comments at 8.

<sup>48</sup> Sprint Nextel Comments at 32.

## VI. CONCLUSION

Sprint Nextel respectfully requests that the Commission adopt the relocation rules proposed above and in Sprint Nextel's initial comments in this proceeding.

Respectfully submitted,

SPRINT NEXTEL CORPORATION

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